



Ancillary Document Review Supplement
(This form must be filled out electronically.)

This form is to be used when reviewing interpretive and/or policy statement(s) in conjunction with the review of a rule.

Interpretive and/or policy statements are issued by the Department of Revenue under authority of RCW 34.05.230. These statements explain the Department's policy regarding how tax law applies to a specific issue or specific set of facts. These statements include documents such as Excise Tax Advisories (ETAs), Property Tax Advisories (PTAs), and Interim Audit Guidelines (IAGs).

All responses should be in **bold** format.

Interpretive or policy statement(s) being reviewed (provide number and title):
ETA 280.04.193/194 (Commissions Earned on Interstate Sales)

Date issued: **September 30, 1966**

Reviewer: **Diane Bren**

Date reviewed: **March 3, 2004**

This review is in conjunction with the review of the following rule(s) (provide WAC number(s) and title(s)):

- **WAC 458-20-193D (Transportation, communication, public utility activities, or other services in interstate or foreign commerce.)**
- **WAC 458-20-194 (Doing business inside and outside the state).**

Briefly explain the subject matter of the document(s): **Explains that commissions earned by a resident agent from business activities only incidentally related to interstate commerce are taxable. The taxpayer was domiciled in Washington and did not have a business situs outside the state, though the taxpayer did solicit orders in other states. The ETA indicates that since the taxpayer does not maintain a place of business "without this state", there is no grounds for apportionment of the taxpayer's gross income from commissions.**

Type an "X" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

YES	NO	
X		Is the document written and organized in a clear and concise manner?
X		Are citations to other rules, laws, or other authority accurate? (If no, identify the incorrect citation below and provide the correct citation.)
	X	Does the document provide information not currently in a rule, other interpretive or policy statement, or WTD?
	X	Is the document providing the result(s) that it was originally designed to achieve?



If the answer is "no" to any of the questions above, provide a brief explanation for that response.

While commissions earned for activities performed in Washington that relate to interstate sales are taxable, the basis provided in this ETA for coming to the determination that apportionment is not available to the taxpayer is not correct. The appropriate basis for determining whether the income may be apportioned is whether the associated activities performed outside Washington are "more than incidental."

Review Recommendation:

- _____ **Amend**
- X** **Cancel** (Appropriate when action is not conditioned upon another rule-making action or issuance of an interpretive or policy statement.)
- _____ **Leave as is** (Appropriate even if the recommendation is to incorporate the current information into another rule.)

Briefly explain your recommendation:

This document should be canceled because it provides misleading information.

Manager action: Date: April 30, 2004

 AL Reviewed and accepted recommendation